

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

AIRWAY CLEANERS, LLC,
Employer

and

REGION 9A, UAW, AFL-CIO,
Petitioner

and

Case No. 29-RC-10185

LOCAL 116, RETAIL, WHOLESALE &
DEPARTMENT STORE EMPLOYEES,
UNITED FOOD AND COMMERCIAL WORKERS
UNION, AFL-CIO
Intervenor¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Tara O'Rourke, a Hearing Officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

¹ Local 116, Retail, Wholesale & Department Store Employees, United Food and Commercial Workers Union, AFL-CIO intervened in the instant proceeding based on a collective bargaining agreement with the Employer.

2. Airway Cleaners, Inc. (Employer), a domestic corporation with its principal office and place of business located at 15 Clinton Avenue, Rockville Centre, New York, and separate places of business at John F. Kennedy International Airport, Jamaica, New York (the Jamaica facility), and LaGuardia Airport, Flushing, New York (the Flushing facility), is engaged in providing cleaning and maintenance services to various customers at various terminals located at the Jamaica facility and at the Flushing facility. During the past 12 months, which period is representative of its annual operations, the Employer, in the course and conduct of its business operations, purchased and received at its Jamaica and Flushing facilities, goods, supplies and other materials valued in excess of \$50,000 directly from entities located outside the State of New York.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved herein claim to represent certain employees of the Employer.

4. The Petitioner initially sought an election in a unit of all full-time and regular part-time cleaners. At the hearing, the Petitioner amended the unit to include all full-time and regular part-time building cleaners, aircraft cleaners, drivers, floor waxers, machine operators, hosts, bartenders and window cleaners employed by the Employer at its Flushing, New York facility, excluding all confidential employees, office clerical employees, guards and supervisors as defined in the Act².

The Employer and the Intervenor contend that their current collective bargaining agreement bars the processing of the instant petition. The Petitioner maintains that the contract does not bar an election in the petitioned-for unit because its terms have not been implemented or enforced with respect to the employees at the Employer's Flushing facility. The Employer and Intervenor maintain that the contract has been sufficiently enforced to retain its bar quality.

In support of its position that the contract has not been enforced, the Petitioner called as witnesses unit employees Nancy Rondon, Maria Madiedo, Filomena Franco, Eroteida Arista and Union Representative Matthew Jackson. Only Vincent Sombrotto, president of Local 116,

²By written stipulation of the parties, which was entered into evidence as Board Exhibit #2, the parties agreed, *inter alia*, that this amended unit is an appropriate unit.

testified on behalf of the Intervenor. The Employer did not call any witnesses. For the reasons set forth below, I find that the contract in issue does not bar the processing of the instant petition and therefore the continued processing of the petition is warranted.

The Employer and Intervenor are parties to a contract that was entered into in November 2003, and whose effective dates are from September 1, 2003, through August 31, 2006. The record does not contain evidence with respect to the initiation and duration of the collective bargaining relationship. The bargaining unit is set forth in the contract as, “all full-time and regular part-time employees employed at JFK Airport and LaGuardia Airport, excluding guards, supervisors, office employees, foremen, salesmen and executives employed at JFK Airport and LaGuardia Airport.” There was no testimony regarding the number of employees employed at each of its facilities. However, based on the information contained in the instant petition, it appears that the Employer employs approximately 80 employees at the Flushing facility.

The contract contains the following twenty-eight clauses: recognition, union security, checkoff, seniority, shop stewards, holidays, hours and overtime, personal days, vacation, leave of absence, bulletin board, probationary period, rest periods, union visitation, work clothing allowance, health benefits, safety and health, strikes and lockouts, wages, prior better benefits, modification, grievance procedure, sick leave-death in family-jury duty, liquidation, separability, successors and assigns, managements right and term of the agreement.

The four employee witnesses testified that they were unaware of the existence of the Intervenor, and first learned that the Intervenor was their bargaining representative in April or May 2004 - after the filing of the instant petition - when three of the Intervenor’s representatives visited the Flushing facility. Based on Intervenor president Sombrotto’s testimony, the record establishes that the Intervenor sent three representatives to the facility in April or May 2004 - after the filing of the instant petition - to have unit employees sign dues authorization cards. The Intervenor did not present any evidence that its representatives visited the Flushing facility to meet with unit employees any time prior to April 2004. The Intervenor presented no evidence that it ever met with or otherwise contacted unit employees to ascertain whether the Employer was complying with the contract. The undisputed testimony establishes that the unit employees never received a copy of a contract. There is no evidence that the Intervenor or the Employer ever made employees aware that they were beneficiaries of a collective bargaining agreement or that they had any rights under a contract. In fact, the employee witnesses testified that they did not know of the existence of a collective bargaining

agreement between the Employer and the Intervenor. In addition, there is no evidence that the Intervenor implemented Article V of the contract (Shop Stewards) by appointing shop stewards to apprise employees of their rights and to monitor the Employer's compliance with the contract.

The record establishes that the Intervenor did not enforce Articles II and III of the contract, the Union Security and Checkoff provisions, respectively. To that end, Sombrotto testified that the Intervenor has not collected dues from or enforced the contract's union security clause with respect to any unit employees employed at the Flushing facility. Sombrotto further testified that the first time the Intervenor sent its monthly "bill" to the Employer regarding the Flushing employees was in September 2004, over five months after the filing of the instant petition.

In an effort to explain why the Intervenor did not collect dues from employees or enforce the Union Security clause, Sombrotto offered the unsubstantiated testimony that as president of the union, he decided to waive the members' obligation to pay dues until after they received their second wage increase because the dues requirement might pose a hardship. When viewed in light of the evidence that (1) employees never knew of the Intervenor until after the filing of this petition; (2) that employees did not know that they were covered by a collective bargaining agreement; and (3) never received a copy of the purported contract, Sombrotto's self-serving claim that he knowingly waived the Union's right to insist on compliance with the contract's union security clause and the concomitant right to collect dues rings hollow.

The record shows that the Employer has not complied with, and the Intervenor has not enforced, most of the economic terms of the contract regarding the employees employed at the Flushing facility.

With respect to wages (Article XIX of the contract), the record establishes that while the contract called for a 25 cent per hour wage increase effective March 1, 2004, the employee witnesses did not receive that increase until some time in April 2004 - after the filing of this petition. The employee witnesses testified that the Employer granted a 6 cent per hour wage increase in September 2004, which is apparently in accordance with the wage schedule set forth in Appendix B of the contract. There is no documentary or testimonial evidence regarding whether other employees at the Flushing facility received the April or September 2004 wage increases. Sombrotto sought to explain the decision not to enforce the contract's wage provision claiming that because the Employer was having financial difficulties, the Intervenor

agreed to allow the Employer to meet its financial obligations under the contract over some undefined period of time. Sombrotto's testimony was devoid of details. Neither the Employer nor the Intervenor offered any probative evidence to substantiate the claim that the Employer was having financial trouble. The only evidence submitted in this regard was a February 25, 2004, letter from the Employer's counsel to Sombrotto stating that the Employer was having a difficult time and that it would meet its monetary obligations to employees as money became available. There is no record evidence that the Intervenor then communicated with the Employer or the employees its alleged decision to waive implementation of the contract's economic terms. Without making any credibility determination, I note that the explanation for not enforcing the contract's wage provision is unsubstantiated, and was never communicated to any interested party.

The record evidence establishes that the Intervenor did not enforce the holiday provisions of the contract. Article VI, Section 1 and Section 3 of the contract provides that employees shall be entitled to seven named holidays with pay, provided that the employee works the regularly scheduled day before and after the named holiday.³ Section 3 of Article VI provides that employees required to work on the named holidays shall be paid at the rate of time and one-half. While the witnesses testified that they were paid at the rate of time one-half when they worked on holidays, they further testified that, contrary to the contract provision, they did not get paid if they did not work on a holiday.

Sombrotto's attempts to explain the Intervenor's non-enforcement of the holiday provision is, at best, confusing. Notwithstanding the unambiguous language of Article VI, Section 1 and 3, set forth above, Sombrotto testified that it was his understanding that if an employee worked on a holiday, he would receive time and one-half pay, but that an employee would not be paid at all if he did not work on the named holiday. Sombrotto pointed to extrinsic, and unsubstantiated evidence, testifying that the holiday provision of the contract was applied in this manner to both the Flushing and Jamaica facilities. That explanation is especially troubling in light of the provision's clear language that payment of holiday pay required only that the employees work both the day before and the day after the holiday. I will not rely on Sombrotto's testimony, as Board precedent prohibits the use of parole evidence to explain or vary the terms of contract.⁴

³ The record is silent regarding whether the employees received any paid holidays before the collective bargaining agreement purportedly went into effect.

⁴ See, *Quality Building Contractors, Inc.*, 342 NLRB No. 38 (2004).

Article VIII, Section 1 (Sick Days) of the contract provides that employees with one or more years of service shall be entitled to four paid sick days each calendar year, and that all unused sick days shall be paid at the completion of the calendar year. The employee witnesses each testified that they receive three paid sick days per year. The record is silent as to whether the employees are paid for the one unused sick day. In addition, there is no evidence regarding whether the rest of the bargaining unit receive sick days in accordance with the contract, nor is there evidence regarding whether employees received sick days before the effective date of the contract. In the absence of such evidence, I am unable to conclude that employees receiving sick days is the result of an existing Employer practice or the implementation of the contract.

Article IX (Vacation) of the contract provides that employees employed one to two years shall receive one week paid vacation, and that employees employed for three years shall receive two weeks paid vacation. The record establishes that employees Rondon, Franco and Arista, who have all been employed by the Employer for under three years receive one week paid vacation. Employee Madredo, who has been employed by the Employer since February 2000, receives one week paid vacation, rather than the contractually provided-for two week paid vacation. There is no record evidence regarding whether the rest of the bargaining unit employees receive vacation pay in accordance with the contract. Nor is there any evidence regarding whether employees received vacation pay before the existence of the contract.

Article XIII (Rest Periods) of the contract provides that employees shall receive one fifteen minute rest period and one thirty minute meal period per day. According to the employee witnesses' testimony, employees do not receive the contractually mandated fifteen minute rest period. The employee witnesses testified that while they know that they are entitled to a thirty minute meal period, they often are required to work through their meal break. There is no record evidence regarding whether the rest of the bargaining unit employees receive rest periods in accordance with the contract. Moreover, it appears from the record that the Intervenor never tried to enforce the Rest Period provision of the contract.

Article XVI (Health Benefits) of the contract provides that effective April 1, 2004, the Employer shall contribute thirty-five dollars per month per eligible employee to 21st Century Affordable Health Care to obtain discounted health and dental benefits. Eligible employees are defined as employees who completed the requisite probationary period, work more than 32 hours per week on average and are not eligible for a government Funded medical plan. Nancy Rondon testified that she does not receive medical benefits from the Employer and that she is eligible for Medicaid. Maria Madiedo testified that as of 2004, she receives medical services

from a plan called “Infinity,” but it is not clear from the record what that plan is and whether it is a State funded medical plan that would make her ineligible for health benefits under the contract. Filomena Franco testified that she does not receive medical benefits from the Employer and that she participates in a New York State sponsored medical plan. Eroteida Arista testified that she has no medical benefits from the Employer and receives no State sponsored medical insurance, but that her son received Medicaid. There was no record evidence that the Employer ever made contractually required contributions for medical benefits on behalf of any eligible employees employed at the Flushing facility.

With respect to the non-economic contract provisions, particularly the grievance procedure, Sombrotto attempted to explain the Intervenor’s failure to process any grievances on behalf of employees by testifying that the Intervenor never received any complaints or grievances from the employees at the Flushing facility. In light of the record evidence that the employees did not know of the Intervenor’s existence until after the filing of the petition, did not know that there was a collective bargaining agreement, and had no shop steward, Sombrotto’s explanation is understandable but totally inconsistent with his claim that the contract charts with precision employees’ working conditions of employment.

The sole evidence of any effort by the Intervenor to enforce the contract relates to the Employer’s failure to pay unit employees for the Martin Luther King, Jr. holiday . In that regard, the Employer’s counsel introduced into evidence through Sombrotto a letter dated January 30, 2004, from Sombrotto to the Employer. The letter indicates that the Intervenor had filed a grievance regarding the Employer’s failure to pay bargaining unit employees for Martin Luther King, Jr. Day, which was a paid holiday pursuant to Article VI, Section 1 of the parties’ contract. Sombrotto testified that he learned that the Employer failed to pay employees for the Martin Luther King, Jr. holiday from unit employees at the Jamaica facility, and that he assumed that the Employer also failed to pay unit employees at the Flushing facility. The Intervenor’s reliance on its January 30, 2004, letter to show that the Intervenor processed a grievance regarding holiday pay is confounding, as Sombrotto also testified that under the holiday provision in the contract, employees are not entitled to pay if they do not work on a named holiday. In any event, there is no evidence that the grievance was resolved or that effected unit employees were paid for that holiday.

Neither the Employer nor the Intervenor provided any evidence that the other provisions of the contract have been applied or enforced.

A determination of whether a contract bars an election often involves a balancing of the principles of industrial stability and employee freedom to choose or to change its bargaining representative. The contract bar doctrine provides that when the contracting parties have executed a collective bargaining agreement, they are entitled to a reasonable period of time during which a question concerning representation cannot be raised, thereby preserving the stability that flows from the contract⁵. However, the postponement of employee statutory rights to effect a change in a collective bargaining representative during the life of a contract is imposed only when the contract meets certain criteria. The contract must be a lawful one which clearly covers the petitioned-for employees in an appropriate unit.⁶ For a contract to bar an election, it must set forth substantial terms and conditions of employees' employment and chart with adequate precision the course of the bargaining relationship.⁷ While the Board has recognized that during the course of almost any bargaining relationship there will be breaches of an agreement, usually resolved through the grievance procedure, and while some agreements are enforced with more vigor than others, it is well established that a contract that has not been applied to the covered employees "does not establish the existence of a stabilizing labor agreement which bars a representation election".⁸ In light of the criteria set forth above, it is clear that the contract has not been applied to the covered employees and does not chart with adequate precision the course of the bargaining relationship such that the parties, and employees, can look to the agreement for guidance in their day to day problems. Accordingly, the contract does not establish a stabilizing labor agreement that bars an election and is not a bar to the processing of the instant petition.

The record establishes that the employees did not know of the Intervenor until after the filing of the instant petition. The employees did not know that they were members of a bargaining unit represented by a labor organization and were covered by a collective bargaining agreement. Therefore, they were not in position to seek the enforcement of the

⁵ *General Cable Corp.*, 139 NLRB 1123 (1962).

⁶ In its post-hearing brief, the Petitioner argued that the bargaining unit set forth in the contract between the Employer and the Intervenor is an inappropriate unit. (The unit is described in the contract as employees employed by the Employer at the JFK and LaGuardia Airports, which locations are designated in the parties' stipulation in the instant proceeding as the Employer's Jamaica and Flushing facilities). As the only issue raised during the hearing was whether the contract constitutes a bar to an election, that issue will not be decided herein.

⁷ *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

⁸ *Tri-State Transportation Co., Inc.*, 179 NLRB 301, 311 (1969).

contract. The Intervenor did not collect dues from or enforce the contract's union security provision regarding the employees at the Flushing facility and only first sent "a bill" to the Employer in September 2004, regarding the remission of dues, five months after the filing of this petition. Such a request for remission of dues presumes that employees were members and had signed checkoff authorizations. As the record contains no evidence of employee membership or the execution of dues deduction authorizations, a fact which the Intervenor's president concedes, I cannot determine what this "bill" was in reference to and therefore I will not rely on it. The employee witnesses' testimony demonstrates that the Intervenor did not enforce the contract's holiday provision, rest period provision, sick leave provision and vacation provision. Neither the Intervenor nor the Employer presented any evidence to show that they enforced any of these contract provisions for any covered employees. There is no evidence that the Employer made any health benefit contributions on behalf of any covered employees or that the Intervenor attempted to enforce this contract provision.

While there was some evidence that the employee witnesses who testified received wage increases in April 2004, and September 2004, this is not sufficient to warrant giving the contract bar quality. In this regard, the contract called for a wage increase in March 2004. However, the testimony of Sombrotto establishes that the Intervenor agreed not to enforce the March 2004 effective date of the wage increase based on the Employer's unsubstantiated assertion that it was having financial trouble and that it would make contractually required payments whenever it had the money to do so. The Board has found that a contract cannot bar an election where the employer and the union agreed not to enforce a number of the terms of the agreement.⁹ Furthermore, the record evidence of the wage increase fails to support the position that the contract should be afforded bar quality. The first wage increase did not go into effect until April 2004, and the second in September 2004, both after the filing of the petition. Where, as here, the contract in any respect, has not been applied to the petitioned-for employees until after the Intervenor became aware of the Petitioner's interest in representing the employees, the Board has held that a contract was not a bar to an election. Thus, in *Tri-State Transportation Co., Inc.*, 179 NLRB No. 301, the employees did not receive vacation and holiday benefits as set forth in the contract, no contractually mandated payments were

⁹ See, *Silver Lake Nursing Home*, 178 NLRB 478 (1969).

made to the health fund on their behalf, the union security clause was never applied and the employees never signed dues checkoff. It was not until one month after the representation petition was filed that the intervenor instituted arbitration proceedings to attempt to enforce the contract. Under these circumstances, the Board held that the intervenor's belated attempt to apply the contract does not establish the existence of a stabilizing agreement which bars an election among the petitioned-for employees. Similarly, the Intervenor's effort to enforce the wage provision of the contract after it became aware of the Petitioner filed the instant petition does not infuse this contract with bar quality. Furthermore, the evidence that the wage increase was implemented was scant. Neither the Employer nor the Intervenor presented any evidence that any employees, apart from the four employee witnesses who testified, received a wage increase in accordance with the contract.

The Intervenor's only other evidence in support of its position that it enforced the contract was its January 30, 2004, letter to the Employer regarding the Employer's failure to pay unit employees for the Martin Luther King, Jr. holiday. This evidence fails to establish that the contract was applied to the petitioned-for employees. Sombrotto testified that he learned that the Employer failed to pay employees employed at the Jamaica facility for this holiday, and that he merely assumed that the Employer failed to pay its Flushing employees for the holiday. The Board has addressed this issue and concluded that the contract did not possess bar quality where the contract was enforced at locations other than that of the petitioned-for employees.¹⁰ Here, there is no evidence that the Intervenor enforced the Martin Luther King holiday on behalf of the petitioned-for employees. To the contrary, the evidence establishes that when employees did not work on the named contractual holidays, they did not get paid, in violation of the contract. The Intervenor's president's record testimony in this regard is perplexing. He testified that (1) contrary to the contractual language employees who do not work on a named holiday are not entitled to holiday pay; and (2) the Employer violated the contract by not paying employees holiday pay for the Martin Luther King holiday in January 2004. These positions are clearly conflicting and confuse, rather than advance, the record. Moreover, the evidence was insufficient to establish that there had been compliance at the Jamaica facility. Even if the Intervenor had obtained holiday pay for the Martin Luther

¹⁰ See, *United Artists Communications, Inc.*, 280 NLRB 1056 (1986).

King holiday, that one example of enforcement would be insufficient to outweigh the overwhelming evidence that the Intervenor did not enforce the holiday provision, or any other provisions, of the agreement.

Based on the record evidence, I conclude that the contract between the Employer and the Intervenor has not been applied to the petitioned-for employees. In light of the evidence that the petitioned-for employees did not know of the Intervenor, did not know that they were covered by a collective bargaining agreement, and never received a copy of the agreement, it is clear that the contract does not chart with adequate precision the course of the bargaining relationship and is not one to which the parties and employees could look to for day-to-day guidance regarding their terms and conditions of employment. Accordingly, I find that the contract does not constitute a bar to an election.¹¹

Based on the above, I find that a question concerning representation exists regarding the representation of certain employees of the Employer within the meaning of Section 2(6) and (7) of the Act. Based on the record and the stipulating of the parties, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time building cleaners, aircraft cleaners, drivers, floor waxers, machine operators, hosts, bartenders and window cleaners employed by the Employer at its Flushing, New York facility, excluding all confidential employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

¹¹ The Board's decision in *Visitainer Corp.*, 237 NLRB, 257 (1978), does not support a contrary result. There the Board reversed a decision by the regional director that a contract did not possess bar quality. Unlike the facts in the current proceeding, the contract there had been complied with regarding paid holidays and vacations, and grievances had been processed pursuant to the contract's grievance procedure. While the parties had been lax in enforcing **all** the provisions of the agreement, the Board concluded that such laxity was insufficient to result in a forfeiture of bar quality. In *Farrel Rochester Division of USM Corporation*, 256 NLRB 996, at 999 fn. 20, (1981), the Board, relied on *Visitainer*, noting that in finding that contract to have bar quality, there was compliance with many of the agreement's terms and substantial compliance with others. It also noted that the parties in *Visitainer* had availed themselves of the grievance procedure to resolve contractual disputes. In *United Artists Communications, Inc.*, 280 NLRB 1056 (1986), the Board adopted the finding of an administrative law judge that *Visitainer* did not support the argument that compliance with the terms of an agreement at some locations constituted substantial compliance with the contract at another location where it had not been applied. That appears, at best, to be the current case, and thus, a finding of bar is not warranted.

The National Labor Relations Board will conduct a secret ballot election among the employees in the group set forth above. The employees will vote whether they wish to be represented by Region 9A, UAW, AFL-CIO, Local 116, Retail, Wholesale & Department Store Employees, United Food and Commercial Workers Union, AFL-CIO, or by no labor organization. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed

both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One MetroTech Center North, 10th Floor, Brooklyn, New York 11201, on or before February 9, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579 or by electronic transmission at Region29@NLRB.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or E-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on February 16, 2005. The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: February 2, 2005, Brooklyn, New York.

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
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Brooklyn, New York 11201